



FEDERAL ELECTION COMMISSION  
WASHINGTON, D C 20463

APR - 1 2004

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Ms. Angela M. "Bay" Buchanan  
Treasurer  
Buchanan for President, Inc.  
8233 Old Courthouse Road  
Suite 200  
Vienna, VA 22182

RE: MUR 5430

Dear Ms. Buchanan:

On March 9 and March 23, 2004, the Federal Election Commission found that there is reason to believe that Buchanan for President, Inc. ("Committee") and you, as treasurer, violated 2 U.S.C. §§ 432(h), 434(b), and 441a(f), provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"). The Factual and Legal Analysis, which formed a basis for the Commission's findings, is attached for your information.

The Commission requests that you contact the Office of General Counsel to schedule a meeting to discuss the Commission's findings as soon as practicable. Please contact Mark A. Goodin, the attorney assigned to this matter, at (202) 694-1650, to schedule this meeting. You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred.

If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

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Ms. Angela M. "Bay" Buchanan  
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For your information, we have enclosed a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Mark A. Goodin, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

A handwritten signature in black ink, appearing to read "Bradley A. Smith", written in a cursive style.

Bradley A. Smith  
Chairman

Enclosures  
Factual and Legal Analysis

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1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3 **RESPONDENTS:** Buchanan for President, Inc. and Angela M. "Bay" Buchanan, as Treasurer  
4 **MUR 5430**

5 **I. INTRODUCTION**

6 The Commission audited Buchanan Reform, Inc. (the "BRI Committee") pursuant to 26  
7 U.S.C. § 9038. The BRI Committee was Patrick J. Buchanan's (the "Candidate") principal  
8 campaign committee for the Reform Party's nomination for President in 2000. Although the  
9 audit of the BRI Committee related to the 2000 election cycle, the audit raises questions about  
10 the Candidate's primary campaign committee's activities with respect to the 1996 election cycle.

11 During the audit fieldwork, the Audit staff discovered an account, previously unknown to  
12 the Commission, entitled the "Buchanan Fund." The facts suggest that the Buchanan Fund was a  
13 federal account of "Buchanan for President, Inc.," which was Mr. Buchanan's 1996 presidential  
14 primary committee ("1996 Buchanan Primary Committee"). Therefore, the Buchanan Fund  
15 account contributors were subject to the contribution limitations for the 1996 election cycle, and  
16 some contributors exceeded these limitations. Neither the BRI Committee nor the 1996  
17 Buchanan Primary Committee reported the Buchanan Fund account receipt and disbursement  
18 activity.

19 The Audit staff also noted that the BRI Committee received excessive contributions and  
20 sent refund checks to its excessive contributors. However, numerous recipients of BRI  
21 Committee excessive contribution refund checks endorsed those checks to the Buchanan Fund  
22 account, thereby resulting in excessive contributions to the 1996 Buchanan Primary Committee.  
23 Furthermore, numerous recipients of BRI Committee excessive contribution refund checks

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1 endorsed those checks directly to the 1996 Buchanan Primary Committee, thereby resulting in  
2 excessive contributions to that committee. Therefore, these account activities suggested possible  
3 violations of the reporting requirements and contribution limitations under the Federal Election  
4 Campaign Act of 1971, as amended (the "Act").<sup>1</sup>

## 5 II. BACKGROUND

6 BRI Committee representatives described the Buchanan Fund as a non-federal account  
7 that was used to pay expenditures to promote the election. The Buchanan Fund account was  
8 opened on March 5, 2001, with a deposit of \$3,879. During 2001, the account activity included  
9 total receipts of \$53,859 and total disbursements of \$48,551.<sup>2</sup> The Buchanan Fund account's  
10 receipts in 2001 included \$8,219 of BRI Committee excessive contribution refund checks  
11 endorsed to the Buchanan Fund account and \$45,520 in contributions directly from various  
12 donors' accounts. A form letter, dated February 20, 2001, from the BRI Committee Treasurer  
13 (Angela M. "Bay" Buchanan) requesting endorsements of refund checks, states that the  
14 Buchanan Fund "will be used to pay campaign related expenses, which do not require 'federal'  
15 dollars for payment."<sup>3</sup>

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<sup>1</sup> All of the facts relevant to this matter occurred prior to the effective date of the Bipartisan Campaign Reform Act of 2002 ("BCRA"), Pub. L. 107-155, 116 Stat. 81 (2002). Accordingly, unless specifically noted to the contrary, all citations to the Act or statements of law regarding provisions of the Act contained in this report refer to the Act as it existed prior to the effective date of BCRA. Similarly, all citations to the Commission's regulations or statements of law regarding any specific regulation contained in this report refer to the 2002 edition of Title 11, Code of Federal Regulations, published prior to the Commission's promulgation of any regulations under BCRA.

<sup>2</sup> The Buchanan Fund account remained open in 2002, but contained minimal funds. Its closing cash balance for 2001 was \$5,308. Statements from the first quarter of 2002 revealed deposits of \$1,609; disbursements of \$4,045; and a cash balance on March 29, 2002, of \$2,872.

<sup>3</sup> Although there are 27 BRI Committee excessive contribution refund checks endorsed to the Buchanan Fund, at this time it cannot be confirmed that the form letter was actually sent to specific payee/contributors. Most of the BRI Committee excessive contribution refund checks were dated in February 2001, and the endorsed checks were subsequently deposited in the Buchanan Fund account by early March 2001.

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1           During 2001, the Buchanan Fund account disbursed \$27,431 to the United States  
2   Treasury on behalf of the 1996 Buchanan Primary Committee.<sup>4</sup> In addition, the Buchanan Fund  
3   account disbursed \$13,720 for legal fees attributed to the 1996 Buchanan Primary Committee  
4   and \$4,000 to an individual for the settlement of a lawsuit. Furthermore, on March 8, 2001, the  
5   Buchanan Fund account transferred \$3,000 to another bank to open an account entitled  
6   "Convention 2000."

7           Neither the BRI Committee nor the 1996 Buchanan Primary Committee designated the  
8   depository which maintained the Buchanan Fund account. Moreover, neither the BRI Committee  
9   nor the 1996 Buchanan Primary Committee reported the Buchanan Fund account activity.  
10   In addition to the existence of the Buchanan Fund account, the Audit staff discovered that 144  
11   BRI Committee excessive contribution refund checks (totaling \$34,605) were endorsed by the  
12   payee/contributor to the 1996 Buchanan Primary Committee. The Audit staff found that 49 of  
13   the 144 endorsed contribution refund checks resulted in excessive contributions of \$14,483 to the  
14   1996 Buchanan Primary Committee.

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<sup>4</sup>       The 1996 Buchanan Primary Committee owed the United States Treasury money in connection with MUR 5192. The conciliation agreement in MUR 5192 obligated the 1996 Buchanan Primary Committee to pay the Treasury as a result of the existence of "stale-dated committee checks." A committee that has received Presidential primary matching funds must pay the Treasury in the total amount of any "stale-dated committee checks," which are defined as outstanding committee checks to creditors or contributors that have not been cashed. 11 C.F.R. § 9038.6.

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1     **III.     ANALYSIS**

2             **A.     The Buchanan Fund Account**

3                     1.     **The 1996 Buchanan Primary Committee failed to report the**  
4                             **Buchanan Fund account activity**  
5

6             A political committee must deposit all receipts into a checking account at a designated  
7     campaign depository, and it must make all disbursements (in excess of \$100) by checks or  
8     similar drafts drawn on accounts at such a depository. 2 U.S.C. § 432(h); *see also* 11 C.F.R.  
9     § 103.3(a). Furthermore, a political committee must notify the Commission of all of its  
10    designated depositories. 11 C.F.R. § 103.1. In addition, a political committee is required to  
11    report certain information, including the amount of cash on hand at the beginning of each  
12    reporting period, the total amount of receipts and disbursements for the reporting period and  
13    calendar year, and the identity of certain contributors. 2 U.S.C. § 434(b).

14            Although the BRI Committee described the Buchanan Fund to the Audit staff as a “non-  
15    federal account” that was “used to pay expenditures to promote the election,” the facts suggest  
16    that the Buchanan Fund was a federal account of the 1996 Buchanan Primary Committee that  
17    was used to benefit the Candidate’s 1996 campaign. As described above, out of \$48,551 in  
18    Buchanan Fund account disbursements in 2001, more than \$41,000 went to payments to the  
19    United States Treasury for stale-dated checks from the 1996 campaign, or for legal fees in  
20    connection with that campaign.<sup>5</sup> Moreover, the solicitation form letter from BRI Committee

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<sup>5</sup>       The receipts and disbursements of the Buchanan Fund account do not fall under any of the categories of exemptions from the definitions of “contribution” and “expenditure.” 11 C.F.R. §§ 100.7(b) and 100.8(b). (As of November 6, 2002, these regulations have been reorganized at 11 C.F.R. §§ 100.71 – 100.92 and §§ 100.130 – 100.154.) *See also* 2 U.S.C. §§ 431(8)(A)(i) (definition of “contribution”) and 431(9)(A)(i) (definition of “expenditure”). Moreover, although some Buchanan Fund disbursements are related to legal matters (\$13,720 “for 1996 legal fees” and \$4,000 for “settle[ment of] a lawsuit”), the Buchanan Fund could not qualify as a “legal defense fund.” *See* Advisory Opinions 2003-15; 2000-40; 1996-39; 1983-21; 1981-13. A “legal defense fund” is not subject

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1 Treasurer Bay Buchanan requests that recipients of excessive contribution refund checks endorse  
2 them to the "Buchanan Fund" because the FEC "is now only finalizing its audit of Pat's 1996  
3 campaign." Therefore, the Buchanan Fund account's receipts and disbursements appear to relate  
4 almost entirely to Mr. Buchanan's 1996 presidential primary election campaign.<sup>6</sup>

5 The 1996 Buchanan Primary Committee – a type of political committee under 2 U.S.C.  
6 §§ 431(4) and 431(5) – has not designated a depository containing the Buchanan Fund account.  
7 Its most recent amended Statement of Organization (dated November 9, 1999) lists nine "Banks  
8 or Other Depositories," none of which is the bank (First Union National Bank) at which the  
9 Buchanan Fund account is maintained. The 1996 Buchanan Primary Committee also has failed  
10 to report the Buchanan Fund account's activity. Therefore, the Commission finds reason to  
11 believe that the 1996 Buchanan Primary Committee, and Angela M. "Bay" Buchanan as  
12 Treasurer, violated 2 U.S.C. §§ 432(h) and 434(b).

13 2. **The 1996 Buchanan Primary Committee received excessive**  
14 **contributions as a result of the Buchanan Fund account activity**  
15

16 Given that the Buchanan Fund account's receipt and disbursement activity related to the  
17 1996 election, the account's contributors are subject to the contribution limitations for that  
18 election cycle. *See* AO 1989-22 (contributions solicited to pay debts remaining from previous  
19 election must comply with limits applied to that election); *FEC v. Ted Haley Cong. Comm.*, 852

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to the prohibitions and limitations of the Act only if the funds therein are raised and spent by an entity that is not a political committee, and if the funds are used exclusively for the purpose of defraying legal costs. *See* AO 2003-15. Here, the funds were not used exclusively for defraying legal costs, since over half of the disbursements from the Buchanan Fund in 2001 went to the Treasury (as described above in footnote 4). Therefore, the Buchanan Fund would not qualify as a "legal defense fund."

<sup>6</sup> No evidence exists that the Buchanan Fund financed any "political activity in connection with ... non-federal elections"; therefore, no basis exists to characterize the Buchanan Fund as a non-federal account. 11 C.F.R. § 102.5(a).

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1 F.2d 1111, 1115 (9<sup>th</sup> Cir. 1988) (accepting FEC's statutory interpretation that post-election  
2 donation to retire campaign debt is subject to contribution limitations with respect to that  
3 election). At the time of the Buchanan Fund account's activity, the Act prohibited individual  
4 contributions to any candidate and his authorized committees with respect to any election for  
5 federal office which, in the aggregate, exceeded \$1,000.<sup>7</sup> Furthermore, the Act prohibits political  
6 committees from accepting excessive contributions. 2 U.S.C. § 441a(f). Therefore, individual  
7 contributions to the Buchanan Fund (which, as described above, was a federal account used to  
8 benefit the 1996 campaign), when aggregated with other contributions to Buchanan and his  
9 authorized committees for the 1996 election cycle (namely, the 1996 Buchanan Primary  
10 Committee), should be limited to \$1,000.

11 The Buchanan Fund account received contributions in two ways: (1) from endorsed BRI  
12 Committee excessive contribution refund checks; and (2) from direct contributions from donors'  
13 accounts. When their donations were aggregated with other contributions to the 1996 election  
14 cycle (*i.e.*, contributions made to the 1996 Buchanan Primary Committee), contributors to the  
15 Buchanan Fund account exceeded the \$1,000 contribution limitation by a total of \$35,393.  
16 Therefore, the Commission finds reason to believe that the 1996 Buchanan Primary Committee,  
17 and Angela M. "Bay" Buchanan as Treasurer, violated 2 U.S.C. § 441a(f) by accepting  
18 contributions to the Buchanan Fund account in excess of the \$1,000 limitation.

19 The 1996 Buchanan Primary Committee's activities with respect to the Buchanan Fund  
20 are similar to previous activity of another of Mr. Buchanan's committees, which resulted in a

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<sup>7</sup> The term "individual" is used as an abbreviation for persons other than multicandidate political committees. See 11 C.F.R. § 110.1(a). Effective January 1, 2003, the individual contribution limit was increased to \$2,000. 2 U.S.C. § 441a(a)(1)(A); 11 C.F.R. § 110.1(b)(1) (2002).



1 Commission admonishment. In MUR 4918, the 1996 Buchanan Primary Committee attempted  
2 to channel excessive contributions to an account it claimed was exempt from the Act's  
3 limitations; however, the committee made disbursements from the account that disqualified it  
4 from any exemption.<sup>8</sup> Although the Commission did not pursue the committee beyond reason to  
5 believe the Commission  
6 nonetheless explicitly admonished the "compliance" fund Treasurer (Bay Buchanan) – who still  
7 serves as Treasurer of the 1996 Buchanan Primary Committee.<sup>9</sup> The Commission's disposition  
8 of MUR 4918 specifically notified the Treasurer of the 1996 Buchanan Primary Committee that  
9 the committee's failure to treat certain accounts in compliance with the Act could result in a  
10 violation.

11 **B. The 1996 Buchanan Primary Committee Received Excessive Contributions**  
12 **From BRI Committee Excessive Contribution Refund Check Recipients**  
13

14 Of the BRI Committee excessive contribution refunds, payee/contributors directly  
15 endorsed 144 refund checks (totaling \$34,605) to the 1996 Buchanan Primary Committee. The  
16 Audit staff found that 49 of these 144 endorsed contribution refund checks resulted in excessive  
17 contributions of \$14,483 to the 1996 Buchanan Primary Committee. Accordingly, the  
18 Commission finds reason to believe that the 1996 Buchanan Primary Committee, and Angela M.

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<sup>8</sup> In MUR 4918, the 1996 Buchanan Primary Committee requested that the recipients of its excessive contribution refund checks endorse them as "Payable to Buchanan Compliance Fund." However, the alleged "compliance" funds, to which many contribution refund recipients endorsed their checks, could not qualify as "general election legal and accounting compliance funds" in accordance with 11 C.F.R. § 9003.3(a), because Mr. Buchanan was a candidate in the primary – but not the general – election for the relevant election cycles. In addition, the accounts did not qualify as civil and criminal penalty accounts pursuant to 11 C.F.R. § 9034.4(b)(4) because the accounts did not limit their disbursements to the payment of civil and criminal penalties.

<sup>9</sup> See Letter from Scott E. Thomas to Angela M. "Bay" Buchanan in MUR 4918 (Aug. 30, 1999). Concluding that the funds placed in the account were "contributions," and noting the resulting excessive contributions, the Commission stated that "[y]ou should take steps to ensure that this activity does not occur in the future." *Id.*

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MUR 5430

• Factual and Legal Analysis

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- 1 "Bay" Buchanan as Treasurer, violated 2 U.S.C. § 441a(f) by accepting contributions in excess of
- 2 the \$1,000 individual limitation.

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